

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2018-211-T

Kevin Marra, Complainant/Petitioner

v.

JMS Worldwide, LLC, Defendant

MOTION FOR JUDGMENT ON THE
 PLEADINGS
 AND
 MOTION IN LIMINE

The Defendant, JMS Worldwide, LLC (“JMS”) hereby submits its motion for judgement on the pleadings and motion in limine on the grounds set forth herein.

Background

Mr. Marra’s verified complaint only states conclusory allegations. He claims:

- JMS’s principal, Richard Johnson, “blatantly stole from him in April 2018”,
- Richard Johnson “overcharged by 300%”,
- Richard Johnson “fabricated hours worked”,
- JMS employee Cameron Bright “intimidated his wife”,
- “Richard Johnson forced me to sign a credit authorization” and “threatened him”.

Mr. Marra provided no detail to support these allegations and JMS denies them. See Answer, filed August 7, 2018.

On September 25, 2018, JMS prefiled the direct testimony of Richard Johnson and Cameron Bright explaining JMS’s transaction and interactions with Mr. and Mrs. Marra. On the

same day, the ORS filed a letter informing the Commission that it did not intend to present testimony in the docket, and provided a copy of the findings of its investigation, which found:

- Mr. Marra was undercharged \$49.00
- The shipper's credit card information was written on the Bill of Lading
- Items on the Bill of Lading were not clearly labeled.

According to the schedule set forth by the Commission, Mr. Marra's rebuttal testimony was to be prefiled on or before October 2, 2018. *See* Prefile Testimony Letter, August 24, 2018. The Hearing Officer explicitly reaffirmed this requirement for the parties on September 28, 2018. Order No. 2018-133-H. After the Hearing Officer's order was issued, Mr. Marra sent him an email message (without copying JMS) stating that correspondence Mr. Marra had filed with the Commission (without serving JMS) on September 19, 2018 was his rebuttal testimony. The Hearing Officer informed Mr. Marra: "You must file and serve upon JMS and ORS written testimony (and exhibits, if any) for every witness you plan to present at the hearing." Email from Randall Dong to Kevin Marra, September 28, 2016 (the email conversation is attached as Exhibit A). Mr. Marra filed no rebuttal testimony or exhibits by October 2, 2018

Motion for Judgment on the Pleadings

The allegations in Mr. Marra's complaint are insufficient to support any relief whatsoever, let alone the relief requested – revocation of JMS's license. A Complaint must provide "A concise and cogent statement of the facts such person is prepared to present to the Commission". S.C. Code Reg. 103-819. Mr. Marra's conclusory allegations do not meet this minimum standard. Dawkins v. Fields, 354 S.C. 58, 62, 580 S.E.2d 433, 435 (2003) ("because of the abundance of conclusory allegations found in the shareholders' verified complaint, it was not an appropriate substitute for an affidavit"). Mr. Marra has also failed to comply with the Commission's

requirement to prefile and serve testimony and exhibits for himself and his witnesses, in spite of the Hearing Officer's explicit instructions. See Reg. 103-845C. For these reasons, Mr. Marra's Complaint should be dismissed with prejudice. SCRCF Rule 12(c).

Motion in Limine

In the alternative, JMS submits this motion in limine in to prevent the Complainant from presenting certain evidence or testimony at the hearing currently scheduled on October 17, 2018 at 10:00 a.m. in the above referenced case. In recent filings with the Commission, Complainant appears to indicate he plans to introduce evidence and testimony in contravention of the Commission's rules and regulations and the South Carolina Rules of Evidence. Complainant requests the Commission grant its motion with respect to the following items or types of evidence:

- 1). Any testimony or exhibits that have not been prefiled with the Commission as required by the Commission's regulations and Order 2018-133-H.
- 2). In an email message addressed to the members of the Commission dated Wednesday, September 19, 2018, Complainant stated that he planned to present "reviews of Richard Johnson's business practices that have been posted online in places like Yelp, Google, the BBB and various other websites". Introduction of such internet postings would violate the rule against hearsay and are not admissible. SCRE Rule 802.
- 3). In correspondence dated August 20, 2018, and received by the Commission on September 17, 2018, Mr. Marra stated he plans to call between 8 and 11 "witnesses either via live testimony or via submission of a deposition". Yet, Complainant has not prefiled the testimony of any of the named witnesses as required by S.C. Code Reg. 103-845(c) and the Commission's regulations, which were explicitly reaffirmed by the Hearing Officer on September 28, 2018 in Order No. 2018-133-H. Nor has Complainant noticed any depositions for use at the hearing.

Complainant moves the Commission not admit the testimony of any witnesses that does not conform to the prefiled testimony requirement.

4). On September 19, 2018, Mr. Marra filed (without serving JMS) a copy of email correspondence between him and a Ms. Marilyn Horwath, and the Office of Regulatory Staff, referring to a complaint against JMS that Mr. Marra solicited online through a website he created for that purpose. JMS objects to the admission of this email or any testimony regarding to Marilyn Horwath on the basis that it is not relevant to the facts alleged in Mr. Marra's complaint (SCRE Rule 402) and is inadmissible hearsay (Rule 802). Furthermore, Mr. Marra has not prefiled any testimony for Ms. Horwath.

Wherefore, Defendant, JMS respectfully requests this Commission:

1. Dismiss the Complaint in this matter with prejudice, or in the alternative
2. Grant its Motion in Limine, and
3. Order such other relief as it deems just and proper.

Respectfully submitted,

s/ Charles L.A. Terreni

Date: October 8, 2018

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Attorneys for JMS Worldwide, LLC

Exhibit A

Marra vs. JMS Worldwide LLC 2018-211-T

Dong, Randall <Randall.Dong@psc.sc.gov>

Fri, Sep 28, 2018 at 1:06 PM

To: "Kevin P. Marra" <kevin.marra@gmail.com>

Cc: "Pittman, Jenny" <jpittman@regstaff.sc.gov>, "Charles L. A. Terreni" <charles.terreni@terrenilaw.com>, PSC_Directive-Order-Hearing-Distribution-List <PSC_Directive-Order-Hearing-Distribution-List@bcbad.state.sc.us>

Dear Mr. Marra:

You must file and serve upon JMS and ORS written testimony (and exhibits, if any) for every witness you plan to present at the hearing.

Randall Dong

From: Kevin P. Marra [mailto:kevin.marra@gmail.com]

Sent: Friday, September 28, 2018 12:58 PM

To: Dong, Randall <Randall.Dong@psc.sc.gov>

Cc: Pittman, Jenny <jpittman@regstaff.sc.gov>

Subject: Re: Marra vs. JMS Worldwide LLC 2018-211-T

Hello Randall, Jenny,

Attached is my rebuttal testimony for this matter.

I also submitted this via USPS on 9/19 and it is in the docket as matter 278318.

278318 Letter

- Email Correspondence and Supplemental Information
On behalf of: Kevin Marra

9/19/2018

Email Correspondence
Supplemental Information

 **JMS Worldwide LLC Documentation of Fraud for Pu...**

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Kevin

kevin.marra@gmail.com

+1-843-564-8303

[Quoted text hidden]

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2018-211-T
CERTIFICATE OF SERVICE

I, Carl E. Bell, hereby certify that I have, on this 9th day of October 2018, served the **MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION IN LIMINE** with **Exhibit A**, upon the parties listed below by electronic email and U.S. Mail:

Jenny R. Pittman, Esquire
Office of Regulatory Staff
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jpittman@regstaff.sc.gov

Kevin Marra
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kevin.marra@gmail.com



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Columbia, South Carolina
October 9, 2018